In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1378

GROUP LIFE & HEALTH INSURANCE COMPANY,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. A1–A6) is not reported. The opinion of the court of appeals (Pet. App. B1–B10) is reported at 434 F. 2d 115.

JURISDICTION

The judgment of the court of appeals was entered on November 5, 1970 (Pet. 2; Pet. App. B11). A petition for rehearing and for rehearing *en banc* was denied on January 8, 1971 (Pet. App. C1). The petition for a writ of certiorari was filed on February 22,

421-902—71——1

1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals correctly sustained Treasury Regulations 1.801–3(d), defining a guaranteed renewable life, health and accident insurance policy as a policy "with respect to which a reserve in addition to the unearned premiums * * * must be carried * * *."

2. Whether the evidence introduced by petitioner at trial was insufficient as a matter of law to support its contention that, in any event, it did carry the requisite reserve, so that it was unnecessary for the court of appeals to remand for a new trial.

STATUTE AND REGULATIONS INVOLVED

The pertinent statutory and regulatory provisions are set forth in appendices D, E and F to the petition.

STATEMENT

Late in 1960, petitioner, a Texas insurance company, began to issue medical and surgical insurance as part of the Blue Shield plan in Texas. In 1961, 1962 and 1963, all of its medical and surgical policies were for group coverage under a contract called the "Non-cancellable, Experience Rated Medical-Surgical Insurance Policy" (hereinafter, the "group policy").[1]

[1] The group policy (Stip. Ex. B) provided medical and surgical benefits for employee groups. The master contract was between petitioner and the employer, with each member of the employee group receiving a certificate of coverage under the master contract. Although petitioner had the right to adjust

In 1964, petitioner also issued some individual policies for medical-surgical coverage, and in each of the years involved (1961 through 1964) it issued a small amount of life insurance (Pet. App. A1–A3).

Petitioner claimed entitlement to income tax treatment for the years in suit as a life insurance company as defined in Section 801 of the Internal Revenue Code of 1954. That section provides that an insurance company will qualify as a life insurance company for income tax purposes if its life insurance reserves plus unearned premiums and unpaid losses for guaranteed renewable health and accident insurance contracts comprise more than 50 percent of its total reserves. Section 801 (a) and (e). Since it was agreed that the reserves for unearned premiums and unpaid losses maintained by petitioner for its group policies, together with its life insurance reserves, would constitute more than 50 percent of its total reserves (Pet. App. A4), petitioner's qualification as a life insurance company depended on a showing that its group policies were guaranteed renewable health and accident policies within the meaning of Section 801(e) of the Code (Pet. App. B2).

Treasury Regulations 1.801–3(d) (Pet. App. F3–F4) defines guaranteed renewable health and acci-

---

premiums by class in accordance with its experience, the group policy could not be cancelled by it and remained in force so long as the premiums were paid (Pet. App. A3–A4). However, the policy terminated by its own terms if a certain minimum level of employee participation was not maintained (Stip. Ex. B, Art. VIII A3(c)), and individual coverage terminated if the individual ceased to be an employee (Stip. Ex. B, Art. VIII A1).

dent policies as policies which are not cancellable by the company (although the company reserves the right to adjust premiums by classes in accordance with its experience) "and with respect to which a reserve in addition to the unearned premiums * * * must be carried * * *." Petitioner argued in the district court that the additional reserve requirement was invalid and that its group policy need not develop the additional reserve required by Treasury Regulations 1.801–3(d) in order to qualify as a guaranteed renewable health and accident contract. It also argued for a finding that in any event "[a]n additional actuarially computed reserve based on recognized morbidity tables could be established" for its group policy (Pet. App. B9 n. 12). The district court, without specifically addressing itself to the Regulations, held that no additional reserve was required in addition to unearned premiums and that petitioner's group policies therefore qualified as guaranteed renewable policies under Section 801(e).

The court of appeals reversed and upheld the regulatory requirement for an additional reserve (Pet. App. B1–B10). Finding the record devoid of evidence which would support a contention that the additional reserve requirement had been met, the court concluded that a remand on this latter point was unwarranted (Pet. App. B10).

ARGUMENT

The decision below is correct. There is no conflict of decisions or any other reason for further review.

1. The opinion of the court of appeals fully answers petitioner's challenge (Pet. 18) to the validity of Treasury Regulations 1.801–3(d). As the opinion makes clear (Pet. App. B2–B9), the special tax treatment afforded life insurance companies is based on legislative recognition of the unique character of the reserves which must be maintained on life insurance. Unlike casualty insurance companies (taxable under Sections 831 and 832), the reserves of which are generally limited to unearned premiums and unpaid losses, life insurance companies must maintain reserves for the funding of long-term actuarial risks. Because a level premium (based upon the insured's insurance age) is employed, amounts must be set aside as reserves in the early policy years to fund the actuarial risk which will increase with the age of the insured and which will cause insurance costs to exceed the level premium in later years. It is these reserves, required by the long-term actuarial risk, which underlie the special tax treatment fashioned for life insurance companies. See *Alinco Life Insurance Company* v. *United States,* 373 F. 2d 336, 345–349; *Massachusetts Protective Assn.* v. *United States,* 114 F. 2d 304 (C.A. 1); Mertens, *Law of Federal Income Taxation,* § 44.01 (Vol. 8).

In 1942, Congress broadened the statutory life insurance company classification to allow companies issuing noncancellable health and accident policies to qualify for life insurance company tax status. In 1959, Congress included companies issuing guaranteed renewable policies, stating that such policies would be

treated in the same manner as noncancellable policies. In amending the statute, Congress did not abandon the long-term reserve test. On the contrary, as the legislative history of Section 801 and its predecessor provisions bears out, the only reason for including noncancellable and guaranteed renewable health and accident policies was their resemblance to life insurance in that they also require a reserve over and above unearned premiums to cover the increasing actuarial risks. See S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 144–145. S. Rep. No. 279, 86th Cong., 1st Sess., p. 32.[2] Where there is no need for such a reserve, there is no basis for tax treatment as a life insurance company. The requirement in the Regulations that a policy have such additional reserve in order to fall within the "guaranteed renewable" category correctly reflects the legislative intendment and is consistent with the statute.[3] Therefore, the Regulations were properly sustained. See *Commissioner* v. *South Texas Co.*, 333 U.S. 496, 501; *Bingler* v. *Johnson*, 394 U.S. 741, 749–751.

---

[2] The opinion of the court of appeals (Pet. App. B4–B7) contains an accurate and full discussion of this legislative history. Petitioner is simply in error in suggesting (Pet. 18) that the Committee Reports do not support the Regulations.

[3] Petitioner's assertion of conflict (Pet. 16–18) with *Helvering* v. *Oregon Mutual Life Ins. Co.*, 311 U.S. 267, is without merit. That case involved a different statute and an entirely different and unrelated question—whether a corporation admittedly taxable as a life insurance company was entitled to a deduction for certain legally required disability reserves under Section 203(a)(2) of the Revenue Acts of 1932 and 1934 (47 Stat. 224, 48 Stat. 732).

2. Petitioner contends that the court of appeals erred in not remanding the case to the district court for a factual finding on whether its group policy in fact developed the reserve required by Regulations 1.801–3(d). It relies (Pet. 8–15) on the many cases holding that when a trial court has failed to make an essential finding of fact on which there is a conflict in the evidence, the case should be remanded to the trial court for a further factual finding.[4] But, it is equally true that a remand is not inevitably required simply because a finding is not made below. There must be a genuine dispute with respect to the undecided factual issue, and the record must be such as would support a factual determination either way by the trial court. Where the record does not present a genuine issue of fact, a remand is unnecessary. See *Yanish* v. *Barber,* 232 F. 2d 939, 947 (C.A. 9), and authorities cited therein; *W. M. Webb, Incorporated* v. *United States,* 424 F. 2d 1070 (C.A. 5), certiorari denied, 400 U.S. 902; Barron and Holtzoff, 2B, *Federal Practice and Procedure,* § 1138; *Cyclopedia of Federal Practice* (3d ed.), Vol. 14, § 68.99.

Here, petitioner's proof in the district court fell short, as a matter of law, of supporting a finding that the requisite reserve had in fact been developed.[5] As

---

[4] The Fifth Circuit, like every other circuit, follows this rule. See *S. S. Silberblatt* v. *United States,* 353 F. 2d 545; *Mladinich* v. *United States,* 371 F. 2d 940.

[5] Significantly, at the close of the evidence in the district court, petitioner did not even ask for a finding that the additional reserve had been developed. It requested only a finding that a reserve *could be* established, but that requested finding was not made (Pet. App. B9 n. 12).

the court of appeals perceived (Pet. App. B7–B9), the very nature of the premium adjustment formula on the group policy precluded the generation of an additional reserve. Premium adjustments took into account increasing actuarial risks, thus obviating the need for an additional reserve to fund those risks. Petitioner's suggestion that nevertheless the requisite reserve was carried is refuted on the record and is unsupported by proof. As the court of appeals pointed out (Pet. App. B10):

> No such reserve was reported in Group Life's annual financial statements, and Group Life's witnesses neither established the existence of nor the need for such reserve with respect to the policy here in question. Indeed, the Government's actuary testified this type of policy would not require an additional reserve, and one of Group Life's witnesses testified that only unearned premium and unpaid loss reserves were in fact maintained. Group Life's statistician did not testify to the contrary, as suggested by Group Life in its brief, but rather discussed only the computation of the initial premium, not the use to which the funds were put. * * *

The court's evaluation of the record is correct[6] and

[6] Petitioner's own assistant controller testified that only unearned premiums and unpaid loss reserves were maintained (R. 163–164). And, in each of petitioner's annual statements filed with the State Board of Insurance of Texas (Stip. Exs. H, I, J, K), no amount appears in Exhibit 9 (p. 11 of the statement) as Item 2 under Part 1 entitled "Additional reserves for guaranteed renewable policies." Moreover, the evi-

clearly within the province of an appellate court. At all events, petitioner's disagreement with the Fifth Circuit's evaluation of the record does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
JOHNNIE M. WALTERS,
Assistant Attorney General.
THOMAS L. STAPLETON,
WILLIAM L. GOLDMAN,
Attorneys.

APRIL 1971.

---

dence relied on by petitioner to show a "disputed" issue of fact (Pet. 6–7), was explicitly adverted to and rejected by the court (Pet. App. B10).

U.S. GOVERNMENT PRINTING OFFICE: 1971